

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
YU, : Docket #17cv7327
 : 1:17-cv-07327-AJN-BCM
Plaintiff, :
- against - :
CITY OF NEW YORK, et al., :
 : New York, New York
Defendants. : April 1, 2020
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE BARBARA C. MOSES,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: LAURENE YU, PRO SE
335 East 14th Street, #52
New York, New York 10009
For Defendants: NEW YORK CITY LAW DEPARTMENT
BY: KIMBERLY WILKENS, ESQ.
DONALD SULLIVAN, ESQ.
100 Church Street
New York, New York 10007

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street, #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

THE COURT: Good morning again, ladies and gentlemen, this is Judge Barbara Moses presiding. This is Yu, Y-U, against the City of New York, et al., civil case number 17cv7327. In a moment, I am going to ask the pro se plaintiff and the counsel for the defendants to introduce themselves on the record. Before I do that, let me just spend a moment making sure that we get as clear a record as possible. As you know, due to the COVID-19 pandemic, we are unable to hold routine court conferences in person in the courthouse as we ordinarily would do. Consequently, we are holding this conference on a telephone line, AT&T teleconference line.

We are making an audio recording. The audio recording may be turned into a written transcript by the parties if they so desire. The Court will make the audio recording available for that purpose. The audio recording, itself, cannot be an official court record, but it can be turned into a written transcript by a certified court reporter that could then be placed on the court's docket and become an official court record. In order to make sure that the audio record is as clear as possible, which in turn will insure that any later typed transcript is as clear as possible, we all have to comply with some fairly basic ground rules, the most important of which is we can only

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2 speak one at a time. The second of which is please
3 reintroduce yourself briefly each time you speak,
4 particularly if there are individuals on the call whose
5 voices sound similar, the court reporter may be unable to
6 distinguish who is talking unless you briefly reintroduce
7 yourself at the beginning. If you are tempted to interrupt
8 another speaker, if you feel they are saying something wrong
9 or that you need to respond, I will call on you, I will give
10 you an opportunity to respond, please wait until I did that.

11 Finally, I hope that we are all on either headsets
12 or handsets, nobody should have their phone on speakerphone,
13 because when you hold a telephone conference on
14 speakerphone, unfortunately all kinds of background noises
15 get picked up and we can unfortunately hear your dog barking
16 or your dishwasher running, or whatever it may be that's
17 going on at the location where you are at. So if you are on
18 speaker, I would ask that you take your phone off speaker
19 and I will try to remind you if we run into trouble on the
20 audio front as the call progresses. So let me now begin by
21 asking the pro se plaintiff to formally introduce herself on
22 the record, Ms. Yu.

23 MS. LAURENE YU: Good morning, Ms. Laurene Yu
24 present.

25 THE COURT: Good morning, Ms. Yu, is there anyone

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else with you at your end of the line?

MS. YU: No, there isn't.

THE COURT: Very well, and who is on the line for the defendants?

MS. KIMBERLY WILKENS: Good morning, Your Honor, assisting Corporation Counsel, Kimberly Wilkens.

THE COURT: Ms. Wilkens, good morning, is anyone on the line with you?

MS. WILKENS: Yes, Your Honor.

MR. DONALD SULLIVAN: Good morning, Your Honor, this is Don Sullivan from the City Law Department, I'm not with Ms. Wilkens, but I'm also present for the call.

THE COURT: All right, so we have Ms. Wilkens and Mr. Sullivan, is it?

MR. SULLIVAN: Yes, Your Honor, thank you.

THE COURT: Okay, for the record, I will now spell everyone's name, Ms. Yu is, her last name is Y-U, Ms. Wilkens is W-I-L-K-I-N-S, and Mr. Sullivan is S-U-L-L-I-V-A-N, which reminds me of one other important instruction which is when you are speaking, if you use a proper name, the name of a supervisor, or a coworker, or whoever it may be, please spell that person's last name because a court reporter later

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trying to make a transcript from our recording
otherwise could easily guess wrong. So let me set the
stage --

MS. WILKENS: Your Honor?

THE COURT: Ms. Yu?

MS. WILKENS: This is Ms. Wilkens, I just
wanted to correct you, the spelling of my last name is
W-I-L-K-E-N-S, sorry about that.

THE COURT: Thank you very much, that's why we
do this, W-I-L-K-E-N-S, all right, and you see, I
already heard your voice and thought you were Ms. Yu
but you were not, you were Ms. Wilkens, which is why
it's important to reintroduce yourself each time you
start to speak. Let me just set the stage for a
moment. I see from the docket sheet, this is my first
conference with the parties, I was designated as the
presiding Magistrate Judge for general pretrial just
recently by the District Judge, Judge Nathan. Judge
Nathan was not the original District Judge assigned to
this case, the original District Judge was the late
Judge Sweet. The case was filed, I see, in 2017, the
defendants made a motion to dismiss, Judge Sweet
granted the motion to dismiss, the pro se plaintiff
appealed to the Second Circuit Court of Appeals. The

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2 Second Circuit Court of Appeals reversed in part and
3 remanded. When the case was returned to the District
4 Court, Judge Sweet, having passed away, the case was
5 reassigned to Judge Nathan who, in turn, referred it
6 to me for general pretrial. So that is where we are,
7 no discovery, as best I can tell, has ever taken
8 place, and the mediation, which was scheduled to take
9 place at one point back when the matter was before
10 Judge Sweet, as best I can tell, that never happened
11 either. Ms. Wilkens, can you confirm that there has
12 been no mediation?

13 MS. WILKENS: Yes, there has been no mediation
14 on this case.

15 THE COURT: All right, so we are effectively
16 almost at the beginning of the case. Now let me be
17 practical, I am a practical Magistrate Judge and I
18 want to be especially practical given the very
19 difficult circumstances that we are all operating
20 under given the pandemic which is making normal life
21 impossible in many respects. There are two ways I
22 could go with this case at the present time. I could
23 give the plaintiff leave to amend, as you all know
24 because you have read the Second Circuit's opinion.
25 The Second Circuit agreed with Judge Sweet that the

plaintiff has failed adequately to state a number of her claims, even those which are in the applicable statute of limitations; however, because she is pro se, the Second Circuit directed that she be given an opportunity to re-plead, which I am happy to set a schedule down for today. At that point, the defendants would have an opportunity after reviewing the plaintiff's amended pleading to either answer it or make another motion to dismiss if the defendants felt it was defective in some way. We could then have another round of motion practice which could take many months. If either side was unhappy with the way that motion practice came out there could, in theory, be another appeal to the Second Circuit. It could be, in other words, a long time before we really got to the facts and to the evidence.

Now another thing that I could do is I could direct the parties to what I would ordinarily call early mediation, not so early in this case since the case was filed in 2017, but still early in terms of my own tenure over the case. And if I were to direct the parties to early mediation, you would mediate the dispute before a court annexed mediator, that is someone who is not a judge but who has been trained in

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mediation and provides that service without charge to the parties. Of course, you would have to do it either telephonically or by some kind of video conference in light of the current national health emergency. So those are your two basic options for what you want to spend the next few months doing. Ms. Yu, do you understand the options I have outlined and do you have a preference?

MS. YU: Yes, Your Honor, I actually already had amended my complaint once so I don't believe I will be amending this case again. I think that it was asked that we mediate but the City dismissed that so that wasn't an option at that time.

THE COURT: When you say that you already amended your complaint once, can you show me where that is on the docket or when it was that you did that?

MS. YU: It was really (indiscernible) when I first filed it, I'm sorry, I don't have that in front of me.

THE COURT: Ms. Wilkens or Mr. Sullivan, is there an amended complaint that I am missing here?

MR. SULLIVAN: Your Honor, this is Mr. Sullivan, I don't believe there is an amended

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2 complaint, I'm trying to call up the Pacer docket
3 sheet to make sure.

4 THE COURT: I'm looking at the Pacer docket
5 sheet now and I am not seeing an amended complaint.

6 MS. YU: My original complaint was asked to be
7 amended so it's probably very early on.

8 MS. WILKENS: Your Honor, this is Kim Wilkens,
9 on docket number 5 there was, I don't know if this is
10 maybe what plaintiff is referring to, an amended
11 application to proceed without prepaying fees or
12 costs, but from my knowledge of the case I don't
13 believe there was an amended complaint filed.

14 THE COURT: Ms. Yu, do you have a copy of your
15 amended complaint handy, can you tell me the date of
16 it?

17 MS. YU: I have to go back to the original
18 case so that's -- unfortunately, I just have this
19 current document in front of me.

20 THE COURT: And what current document do you
21 have in front of you, Ms. Yu?

22 MS. YU: Your Honor documents --

23 THE COURT: My documents.

24 MS. YU: Yes.

25 THE COURT: Oh, you mean my order scheduling

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this proceeding?

MS. YU: Yes, I didn't know to go back to the original files which is a different case, but I believe, I know it's early on and I did file.

THE COURT: Well I'm not sure you did. I'm not trying to be difficult here, but I have the Court's electronic docket up on my computer screen and unless it's hidden somewhere as an attachment to something else, which occasionally happens given the way our electronic docket sheet is created, but unless it's attached to something else, I am not seeing it. and your original complaint, the complaint that you filed on September 25, 2017, which is docket number 2, docket entry number 2 on our electronic docket sheet, is the complaint that, as best I understand it, the District Judge found to be insufficient on its face.

So the problem is if you stick with that one, it's not going to help you. You have, by order of the Second Circuit, and opportunity now to restate your claims to beef up your specific factual allegations and to see whether they add up, assuming them to be true, to see whether they add up to a cognizable claim under Title 7, for example, or one of the other laws under which you are suing. But the fact that the

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Second Circuit has remanded to give you leave to amend does not mean that the Second Circuit has found your existing complaint to be adequate, the Second Circuit did not so find. So I think the ball is in your court, Ms. Yu.

MS. YU: Oh, okay. May I ask the defendants what they would like to do?

THE COURT: Well let's get the City's view on what would be a good practical way to go forward in this case? Who is speaking for the defendants on this issue?

MS. WILKENS: Kim Wilkens. Our position is that the plaintiff should amend her complaint.

THE COURT: All right, you're not interested in going to mediation at this time, is that correct?

MS. WILKENS: We're not interested in mediation at this time but we would, if plaintiff was considering settling we would entertain a settlement proposal.

THE COURT: Without giving me any figures, because this is not a confidential settlement conference, this is a public scheduling conference, Ms. Yu, have you had any settlement negotiations with the defendants --

MS. YU: No.

THE COURT: And, if not, are you interested in

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initiating such negotiations?

MS. YU: Well since the City has brought it up, I would be interested in the settlement, of course.

THE COURT: Okay, give me one moment, please. I am just looking at the City's motion to dismiss which was made before Judge Sweet to make sure I understand what pleading it was made against. It does not refer to any amended complaint.

MR. SULLIVAN: Your Honor, this is Mr. Sullivan, I'm going back over the history of the case in my mind, I think that plaintiff might have also filed an Article 78 proceeding and that may be where she's thinking there might have been an amendment.

THE COURT: But that would not have been filed in this court.

MS. YU: No.

MR. SULLIVAN: Oh, no, for sure, I'm just trying to suggest to plaintiff that that may be where her confusion about where she filed an amended complaint --

MS. YU: No. No, that's a different court, I know.

MR. SULLIVAN: Okay, (indiscernible) then.

THE COURT: Okay, hold on one minute, bear

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2 with me, ladies and gentleman, while I just take
3 another look at the docket. What I'm looking at, Ms.
4 Yu, is your response to the plaintiff's motion to dismiss
5 your original case. Sometimes this is where plaintiffs
6 attach their proposed amended complaint, but I don't see
7 any proposed amended complaint attached to your opposition
8 papers.

9 So I think what we should do here, ladies and
10 gentleman, is we should operate on two tracks. Ms. Yu, I
11 am going to give you a date for filing an amended
12 complaint and I am going to give you a generous period of
13 time within which to do that. And I am also going to
14 direct that during that same period of time the parties
15 are to set up by themselves, they don't need the Court for
16 this, a time and place to discuss settlement. So I am
17 going to ask the parties to both of those two things at
18 the same time. If the settlement discussions are
19 productive, that obviously will be hugely beneficial for
20 both parties and if you are able to reach agreement on the
21 terms of the settlement, the City will notify me by letter
22 and we will all know what to do at that point. But if you
23 are unable to reach agreement on a settlement, then I
24 think we are going to need the plaintiff to go ahead and
25 formally file an amended complaint and again, I will then

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2 give the City and the other defendants an opportunity to
3 review it and determine whether they believe it should be
4 answered, in which case the next step would be discovery, or
5 whether it remains deficient in some ways or in all ways, in
6 which case we can expect another round of motion practice.

7 Let me remind you, Ms. Yu, I'm sure you have
8 carefully read the Second Circuit's opinion, but in order to
9 make sure that we are all on the same page, as I understand
10 what is open to you at this time, what is available to you
11 at this time, what you are permitted to re-plead is as
12 follows. You are permitted to re-plead your state and city
13 claims of discrimination and related claims to the extent
14 that they are based on events since September 25, 2014, and
15 to the extent that they are based on an episode or episodes
16 other than those formally litigated before the State
17 Division of Human Rights. You are permitted to re-plead
18 your federal claims which I understand to be brought
19 principally under Title 7 and the ADEA, to the extent that
20 they are based on events after September 28, 2016. You are
21 not permitted to re-plead your civil rights claim under
22 Section 1981. And to the extent you do choose to re-plead
23 either your state claims, your city claims or your federal
24 claims within the applicable statute of limitation, it is
25 your responsibility, Ms. Yu, to plead, as we say in the

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2 legal business, to plead facts rather than conclusions. That
3 is, to give you an example just to illustrate the point, it
4 is not sufficient to say that so and so acted
5 discriminatorily towards me, or that I was not hired or I
6 was not promoted, or I was disciplined because of some
7 protective characteristic such as race or age, you actually
8 have to state the facts which underlie that contention. For
9 purposes of pleading, the Court will assume that the facts
10 that you state are true, the Court will temporarily make
11 that assumption during the pleadings stage of the case, and
12 the Court will ask itself, by the Court I mean either me or
13 the District Judge depending who gets the motion, the Court
14 will ask itself if these facts are true, fi the plaintiff
15 can prove that these specific events occurred, does it add
16 up to the legal claim which she is making.

17 So again, it's generally not sufficient to say,
18 for example, I was passed over because of my race, you have
19 to explain the facts that lead you to believe that. Perhaps
20 it was something that somebody said, perhaps it was because
21 you felt that you were better qualified than persons
22 of a different race, whatever the underlying facts are
23 that are the basis for your legal conclusion have to
24 actually be in your complaint as facts. Do you
25 understand what I have told you?

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MS. YU: Yes, I thought I had did that on the first complaint though.

THE COURT: Well, Judge Sweet felt that you did not, and the Second Circuit did not disagree with Judge Sweet, but it did rule that since you are a pro se plaintiff, you get another chance. So that's what we're doing now. I should add, Ms. Yu, this is a good time for me to tell you that we do have a legal clinic, it's called the NYLAG clinic, NYLAG stands for New York Legal Assistance Group, I don't know if you're familiar with it.

MS. YU: Yes, I am.

THE COURT: You've worked with them?

MS. YU: Yes.

THE COURT: Okay. So they remain available to assist civil litigants during the national health emergency. However, like everybody else, they have gone to a remote service model, so in order to get an appointment with NYLAG, you have to call them, and I'm going to assume you already have that telephone number, if not it's available on the Court's website.

MS. YU: Yes.

THE COURT: Leave a message and they will return your call and make a telephone appointment with

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2 you. They certainly understand the legal principles
3 that I have just outlined to you and they may be very
4 helpful to you during this process. So Ms. Yu,
5 actually before I ask Ms. Yu how much time she needs,
6 let me ask the defendants if they believe I have
7 misstated in any way the claims which are still open
8 to the plaintiff?

9 MR. SULLIVAN: Your Honor, this is Mr.
10 Sullivan, one other point that we wanted to make, and
11 Ms. Wilkens may also remember some additional points,
12 but one of the points we had --

13 THE COURT: You're mumbling a little bit, Mr.
14 Sullivan.

15 MR. SULLIVAN: My apologies, Your Honor.

16 THE COURT: That's better.

17 MR. SULLIVAN: Thank you. One of the concerns
18 we had, and Ms. Wilkens may remember some additional
19 concerns, but one we had was Ms. Yu had identified a
20 number of bases of alleged discrimination but had
21 failed to identify what they were. For example, she
22 was suing under religion but didn't identify her
23 religion.

24 THE COURT: Yes, that's a good point, I
25 actually notice that myself when I reviewed the

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2 complaint. So this is a good example, Ms. Yu, of the
3 principle we were discussing a moment ago where it's
4 important to plead, that is to state in your
5 complaint, actual facts rather than conclusions.
6 You've stated in your original complaint that you felt
7 you were discriminated against in part on the basis of
8 race and there are some supporting facts, some, not a
9 lot, but some supporting facts in your original
10 complaint that relate to that conclusion. You also
11 stated, however, that you were discriminated against
12 on the basis of religion, but as best I can tell there
13 are zero supporting facts related to that allegation.
14 You do not state, for example, what your religion is
15 or what your perceived religion is, or what kind of
16 conduct, comments or otherwise underlie your belief
17 if, indeed, you have the belief that you were
18 discriminated against on a religious basis.

19 Now sometimes, to be candid, sometimes EEOC
20 plaintiffs check all the boxes just to make sure
21 they're not missing anything, that's kind of a natural
22 human instinct. But when you sit down to create your
23 amended complaint, Ms. Yu, that's not a good instinct,
24 you should only plead claims that you actually think
25 you have facts to support. Do you understand what I

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am telling you?

MS. YU: I understand.

THE COURT: All right. So Ms. Yu, how much time would you like to file your amended complaint?

MS. YU: May I ask a question?

THE COURT: Sure.

MS. YU: Regarding discussions of settlement, would this discussion be prior to agreeing to the settlement or after doing a complaint? So in other words, we can't --

THE COURT: I want you to do both at the same time. That is if you are able to reach agreement on a settlement then we never need to have an amended complaint, we never need to have an answer to the amended complaint, we never need to have motion practice relating to the amended complaint. I want the two sides to have, again, I would say early settlement discussions, even though the case is a 2017 case it's early in the present phase of the case. I think I understand what you're getting at Ms. Yu, certainly after the defendants' lawyers see your amended complaint they'll have a better idea of whether they're planning to dismiss again. But I also think that given the many administrative complaints and the fairly significant record

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2 we have as to what actually happened over the course of your
3 career with ACS, I think both sides know enough about the
4 case to rationally be able to determine whether settlement
5 is a possibility. Look, if you come in hot and heavy, as
6 they say, and say I want, you know, a million dollars and
7 Mayor de Blasio to apologize to me personally, believe it or
8 not I've had people say that to me, then settlement isn't
9 going to go anywhere. That's just, you know, everyone would
10 just be wasting their time. But if there is a reasonable
11 settlement to be had, I think we'll know that fairly
12 quickly.

13 MR. SULLIVAN: Your Honor, this is Mr.
14 Sullivan, I apologize if I'm interrupting, I just
15 wanted to let Ms. Yu know, with all due respect, the
16 City asked for a demand from the plaintiff and I think
17 Your Honor's comments were fair, I don't want to put
18 anyone in a bad spot, but we would ask for a realistic
19 demand for Ms. Yu and then we'll be able to assess
20 whether a settlement is a possibility.

21 THE COURT: Well, look, somebody has to go
22 first.

23 MR. SULLIVAN: Yes.

24 THE COURT: You know, I don't want the two
25 sides saying, no, you go first, no, you go first, no,

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2 you go first. I generally don't care which side goes
3 first, but I will tell you this, the City attorneys
4 have done more of this than Ms. Yu has. The City
5 attorneys settle cases like this all the time and Ms.
6 Yu, I'm guessing, you have somewhat less experience in
7 negotiating a settlement, correct?

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MS. YU: Correct.

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THE COURT: So it might not be such a terrible
10 idea in this case for the City to go first, Mr.
11 Sullivan, what do you think?

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MR. SULLIVAN: Again, Your Honor, I
13 (indiscernible) take your comments and I certainly
14 appreciate where they're coming from, I just know as a
15 practical matter when I try to get money from the
16 Comptroller, I'm typically asked what is plaintiff
17 looking for. So that's why we usually ask plaintiff to
18 --

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THE COURT: All right, here's what I'm going
20 to do, I am going to ask the plaintiff to go first but
21 I'm not going to get you off the hook, Mr. Sullivan, I
22 don't want to hear a month from now or six weeks from
23 now that plaintiff made a demand and the City declined
24 to make an offer because they felt that the
25 plaintiff's initial demand was unrealistic. That gets

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2 you off the hook way too easy. I see this a lot when
3 I conduct judicially supervised settlement
4 conferences, it drives me nuts even in the best of
5 times, and I don't want that to be where we're going
6 here. So I'm happy to direct the plaintiff to go
7 first, but I am not going to let the City decline to
8 bid because the City feels that the plaintiff's offer
9 is too high. The City always feels that the
10 plaintiff's initial offer is too high. But if we're
11 going to have a negotiation, both sides have to be
12 willing to put something on the table, do you
13 understand me, Mr. Sullivan?

14 MR. SULLIVAN: I certainly do, Your Honor,
15 thank you.

16 THE COURT: All right. So again, Ms. Yu,
17 you're going to be working on two tracks at once,
18 you're going to be preparing an amended complaint, but
19 you also have to be prepared to tell the City in as
20 realistic terms as possible what it is you want. And
21 this is something you can also consult with NYLAG
22 about. The attorneys there have done this before and
23 they probably have a pretty good idea of what the
24 settlement value of various kinds of cases typically
25 is, which is to say what you could expect the City to

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be willing to consider as a reasonable settlement.

So how much time would you like, I'm thinking 60 days for both tracks. That is to initiate the settlement conversation, and if you can't settle the case, to file your amended complaint within 60 days from today, how does that sound?

MS. YU: That sounds good. I'm also thinking that the longer this is lasting the more the dollars are worth, so --

THE COURT: Now why do you say that, Ms. Yu?

MS. YU: Because the longer I'm out of work, the longer my value is depleting in the general market, but also in --

THE COURT: Well, so let's get a little bit of background here. You were terminated formally from ACS in 2016, did I get that right?

MS. YU: Correct, the end of the year, yes.

THE COURT: At the end of 2016.

MS. YU: Yes.

THE COURT: And have you worked since then?

MS. YU: Dabbled in jobs.

THE COURT: You've dabbled in jobs.

MS. YU: Yes.

THE COURT: All right. I should advise you now

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2 that that information, if the case goes forward, is
3 going to become relevant, you're going to be required
4 to divulge that information, who you worked for and
5 how much you got paid because that's going to be
6 relevant to any potential damages claim. Ordinarily, I
7 understand what you're saying, ordinarily, if someone
8 has a discrimination claim and part of the claim is
9 that they were unlawfully terminated, they can argue
10 and they often do argue that the longer they're out of
11 work, the higher their settlement or damages award
12 should be. However, it's not that simple, even if you
13 were to establish that you were unlawfully terminated,
14 you would still have the burden of proof of
15 establishing that that's the reason you were unable to
16 be reemployed, which is a separate question and
17 doesn't always follow the one from the other.

18 In addition, if your continuing unemployment
19 was due to intervening events, let's say, for example,
20 a virus pandemic had required the economy of the United
21 States to shut down in a way that throws a lot of people
22 out of work, even if they don't have a claim of
23 discrimination, that might well be precisely the fruit of
24 a situation that would cut off a civil rights plaintiff
25 damages claim on the theory that that is an independent

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2 cause and cannot be attributed to the allegedly unlawful
3 conduct. So under present circumstances, just trying to
4 think it through with you, under present circumstances,
5 I'm not sure that the situation we are in now is
6 particularly relevant to your damages claim one way or the
7 other.

8 MS. YU: That's true, but I would still be
9 working as, because the city workers are still working I
10 believe, I mean the counsel is still working and they're
11 employed, so I would be working along with them, so --

12 THE COURT: If something else had happened since
13 2016, which has a speculative element to it.

14 MS. YU: Yes.

15 THE COURT: All right, so I think you understand
16 what the issues are. Let me take a look at my calendar
17 here, give me one moment, today is April 1st, sixty days
18 from today is I believe May 30th, which is a Saturday. So
19 Monday, June the 1st, Monday, June the 1st will be the
20 plaintiff's deadline to file an amended complaint in
21 conformity with the mandate of the Second Circuit Court of
22 Appeals. That is you're confined to the claims that the
23 Second Circuit remanded and gave you an opportunity to re-
24 plead.

25 Now before that happens, how much time do you

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need, Ms. Yu, to decide what your demand is going to be to the City?

MS. YU: Oh, I mean I can do it tomorrow.

THE COURT: Well I'm going to give you a little longer than that.

MS. YU: You mean the formal documents?

THE COURT: Yes and no. So today is April 1st, I'm going to give you until April 15th, two weeks to make a settlement demand on the City. I do think you should put it in writing, but please don't put it on the docket, this is not going to be a public court document. Generally speaking, settlement negotiations are confidential from the public, that is helpful to the process. So it should be a letter that you can email, if you have their email address, directly to the City's attorneys. And I will give the City two weeks after that to respond again in writing, so that would be April the 29th. So April 15th for the plaintiff's demand, April 29th for the defendant response, and remember, Mr. Sullivan, this is not a letter saying we decline to respond because your offer was so ridiculous, even if you feel that way, this is a letter saying this is our offer, got it?

MR. SULLIVAN: I understand that, Your Honor,

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the only thing I would request is, again, just
(indiscernible) --

THE COURT: Get a little closer to the phone,
Mr. Sullivan, get a little closer to the phone.

MR. SULLIVAN: My apologies, there must be
something wrong with my phone, my apologies, I'll try
again. I understand what you said, Your Honor, and
we'll certainly follow those instructions. My only
request is that we be given a little more time only
because of the emergency tying up a lot of City
resources at the moment, and I know of people that
I'll need to review whatever settlement memo I can
prepare, so if I could have an additional week or ten
days, that would be --

THE COURT: All right, I'll give you May the
6th, that's three weeks for your response.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: It shouldn't take the City, even
in difficult times, more than three weeks to respond
to an employment discrimination demand, you've done
this before.

MR. SULLIVAN: I appreciate that, Your Honor,
thank you.

THE COURT: All right, after we have the

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2 plaintiff's written demand and the City's written
3 offer, I am going to require, not suggest but require
4 that within the two weeks after that, that is between
5 May the 6th and May the 20th, the pro se plaintiff and
6 at least one of the attorneys for the defendant get on
7 a live telephone call and have a good faith settlement
8 discussion. I find that a face to face conversation,
9 even if the two sides are very, very far apart, would
10 be extremely helpful and certainly more helpful than
11 written demands and counteroffers in making each side
12 understand where the other side is coming from and
13 whether there truly is flexibility or not. So I am
14 going to mandate that that real time conversation
15 happen, it can happen on the phone line, it can happen
16 over Zoom, or Skype or whatever you prefer to use.
17 Obviously, it should not happen in person under
18 present circumstances. And then once that conversation
19 has occurred, I would like a letter from the
20 defendants after consultation with the plaintiff, I
21 want the content of the letter to be joint, even
22 though only one side is going to file it, just telling
23 me we did what you said, the plaintiffs gave us their
24 demand, we gave the plaintiff our counteroffer, we had
25 a real time conversation on such and such a day, and

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2 then you will either tell me we settled the case, we
3 can't settle the case, we're still working on settling
4 the case, whatever the status of settlement is at that
5 point. And I want that letter on or before June 1st,
6 which is the plaintiff's deadline for filing her
7 amended complaint. Okay?

8 MR. SULLIVAN: Yes, Your Honor, thank you.

9 MS. WILKENS: Yes.

10 MS. YU: Yes, Your Honor.

11 THE COURT: I don't think, given that we are
12 still getting the pleadings finalized, I don't think
13 there is anything further for me to schedule at this
14 time. If the plaintiff files a complaint, I will
15 leave it to the defendants either to answer or move
16 within the time set by the Federal Rules of Civil
17 Procedure, or to request an extension for one of those
18 two purposes if that is what defendants determine that
19 they need.

20 MS. YU: May I add something?

21 THE COURT: Sure.

22 MS. YU: The City has asked for multiple
23 extensions of time to (indiscernible) my complaints,
24 so maybe it's premature to ask that just if they just
25 answer accordingly, I believe it's thirty days, but

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2 they've been getting multiple times of extension and
3 extension of documents, it's just they've always
4 gotten what they wanted and I'm just a pro se, you
5 know, plaintiff. So if they can just stick to the
6 schedule and not keep asking for multiple dates of
7 extension, that will be appreciated.

8 THE COURT: I understand your concern, Ms. Yu,
9 and it can be frustrating if you feel that the other
10 side is taking more time than you are. On the other
11 hand, the City Law Office I know is terribly
12 overburdened, as all law offices are by trying to
13 operate under the extreme conditions that are
14 currently in force, so, you know, I am not going to
15 promise you that I'm going to be a strict taskmaster
16 here. Under present circumstances we all need to be
17 somewhat courteous and somewhat generous with one
18 another in terms of time.

19 MS. YU: I have just filed this like multiple,
20 to me I have been through all the stages and for them
21 to have multiple lawyers, like every time there's a
22 different lawyer, and I believe they've gotten
23 multiple chances to answer all the questions. So I've
24 been answering it since 2016 or actually even before
25 that since New York State, it's just they've gotten

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multiple opportunities because that's City Hall,
right, they have like a hundred lawyers to answer, so.

THE COURT: They have a hundred lawyers and
they have thousands and thousands of cases, you're not
the only one, Ms. Yu, we're all doing the best we can.
All right, anything further today, Ms. Yu?

MS. YU: Yes, this letter of, that you've
asked for me to type up for the demand, is that
emailed directly to the lawyers, are you cc'd on it as
well or just --

THE COURT: No, I don't want to see it, I
don't need to see it. Settlement negotiations happen
directly between the plaintiff and the defendants, the
Court does not need to be involved other than you
telling me later how it came out, okay?

MS. YU: Got you, thank you.

THE COURT: Anything else from defendants?

MR. SULLIVAN: Your Honor, this is Mr.
Sullivan, probably in excess of caution, just to make
it clear to Ms. Yu, my understanding of your
instructions is when we send the letter to the Court
June 1st, again, same thing, we can mention that we've
had some discussions but we should not mention the
amounts that were exchanged, am I correct?

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THE COURT: That's correct. So by way of example only, the City might file a letter a couple of days before June 1st and it might say: "Dear Judge Moses, we are writing to provide a status update regarding settlement, on thus and such a day the plaintiff emailed a written settlement demand to defendants' counsel. On thus and such a day the defendants emailed, rejected the demand but emailed an offer in a different amount to the plaintiff. On thus and such a day plaintiff Yu and attorney Sullivan conducted a Skype conversation regarding settlement for 20 minutes and were able to narrow the gap but have not yet resolved the case, we are continuing to discuss." That might be, for example, a status letter.

If the parties really do make progress in discussing settlement, even if the progress is modest I will leave you with this thought, in addition to offering a mediation service through our court annexed mediators, I, as your assigned Magistrate Judge, will be willing to conduct a settlement conference myself where I get personally involved in the settlement negotiation including, at that point, of course, knowing exactly what figures are being discussed and

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2 so forth. And, of course, under present circumstances
3 I would also conduct that on a telephone conference
4 call. But I'm not going to do that at the beginning,
5 I'm not going to do that until and unless I believe
6 that the parties are close enough so that there is a
7 possible settlement to be had, that a Magistrate Judge
8 can perhaps twist a few arms and make it happen.
9 Until and unless you get to that point, it's not a
10 good use of the Court's time, go it?

11 MS. YU: Understood.

12 THE COURT: All right, so to review the dates
13 again, plaintiff will make her written demand by April
14 15th, defendants will respond in writing by May the
15 6th, the parties will have a direct discussion about
16 it, not in writing but on the phone or on some kind of
17 video conference on or before May 20th, the City will
18 provide me a settlement status update on or before
19 June the 1st, and if the parties have not succeeded in
20 settling the case, the plaintiff's amended complaint
21 will be due on June the 1st. And Ms. Yu, you have ECF
22 filing privileges correct, so you don't have to worry
23 about how you're going to get that thing on the
24 docket.

25 MS. YU: Yes. Yes, I do.

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THE COURT: Good, very happy to hear it. All right, anything else, ladies and gentleman?

MS. YU: No, Your Honor.

THE COURT: Thank you very much for your time, we will be adjourned, a very brief scheduling order containing the same dates I just outlined will be posted on the docket hopefully later today. Ardis, you may take us off record and we will now be adjourned.

MS. YU: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Yu versus The City of New York, et al., Docket #17cv7327, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: April 22, 2020